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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.1280 of 2007

Appellants
(Non-Applicants
No.1, 2 and 5)

1. Jatanram, son of Ramcharan Kumhar, aged about 28 years, Caste-Kumhar, Driver, R/o Kaskela, P.S. Pratappur, Police Chowki Bhatgaon, Tahsil Surajpur, District Sarguja
2. Chiranji Lal Agarwal, son of Shri Hukum Chand Agarwal, aged about 50 years, Caste-Agarwal, R/o Village Salka, Occupation-Owner of tractor & Gross Keeper, Village Bhatgaon, P.S. Pratappur, Distt. Sarguja
3. Ganesh Kumar Agarwal, son of Shri Hukum Chand Agarwal, aged about 35 years, R/o Village Saika-Adhina, Police Chowki Bhatgaon, P.S. Pratappur, Distt. Sarguja

versus

Respondents
(Applicants/
Claimants)

1. Smt. Phool Bai, widow of Late Bholaram, aged about 28 years
2. Ku. Basanti, daughter of Late Bholaram, aged about 10 years
3. Ramadhar, son of Late Bholaram, aged about 08 years
4. Ku. Shanti, daughter of Late Bholaram, aged about 06 years
5. Ku. Sita, daughter of Late Bholaram, aged about 04 years
6. Smt. Phoolkunwar, widow of Late Hirohit, aged about 65 years

No.2 to 5 are minors through their natural guardian mother Smt. Phool Bai, wife of Late Bholaram

All are Harijans by caste, resident of Village Dugga, P.S. Pratappur, Tahsil Surajpur, District Sarguja

Non-Applicants No.3
and 4

7. Ramkeshwar, son of Late Hirohit, aged about 40 years, Harijan, Occupation, working in SECL Bhatgaon Colliery, resident of Village Dugga, P.S. Pratappur, Tahsil Surajpur, District Sarguja



(29)

8. The Oriental Insurance Company Ltd.
through the Branch Manager, Branch
Office, Ambikapur, District Surguja

Miscellaneous Appeal under Section 173 of the Motor Vehicles
Act, 1988

Present : Ms. Sharmila Singhai, counsel for the appellants.

ORAL ORDER
(Passed on 16th November, 2007)

Heard on admission.

(2) The appellants are aggrieved by an order dated 04-08-2007 passed by the IInd Additional Motor Accidents Claims Tribunal, F.T.C., Surajpur, Surguja (hereinafter referred to as 'the MACT') in Claim Case No.113/06, whereby on an application under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') filed by the claimants on 24-01-2005, the MACT awarded interim compensation of Rs.50,000/- against the appellants.

(3) Ms. Sharmila Singhai, learned counsel for the appellants did not dispute the following:

(A) that death of Bholaram, who was a pillion rider on Rajdoot Motor Cycle No.CG15ZJ-6042 was caused on 24-12-2004 due to collision with the Tractor-Trolley No.MP27B-1773 and 7237.

(B) that appellant No.1 Jatanram was the driver of the tractor-trolley, appellant No.2 Chiranji Lal Agarwal was the owner of the tractor and appellant No.3 Ganesh Kumar Agarwal was the owner of the trolley attached to the said tractor.



(30)

(C) that the tractor and trolley were not insured on the date of accident, and

(D) that it is also not in dispute that the police had launched prosecution against appellant No.1, Jatanram under Section 304-A of the Indian Penal Code for causing death by rash and negligent driving.

(4) Miss Sharmila Singhai, learned counsel for the appellants has assailed the impugned order on the ground that the MACT failed to take into consideration that the appellants had in their written statement averred that the tractor-trolley were stationary and that the accident had occurred due to rash and negligent driving by respondent No.7, Ramkeshwar.

(5) I have considered the submission made by learned counsel for the appellants and also perused the annexures with the memorandum of appeal. The claimants had specifically averred not only in the application under Section 166 of the Act but also in their application under Section 140 of the Act that the accident had occurred due to rash and negligent driving of the tractor by appellant No.1 Jatanram. This was further corroborated by the copy of the First Information Report, wherein it was mentioned that the accident had occurred due to rash and negligent driving by the driver of the tractor. It is also not in dispute that the police had launched prosecution against appellant No.1 Jatanram under Section 304-A of the Indian Penal Code for causing death by rash and negligent driving. No report was lodged by the appellants that the motor cycle being driven in rash or negligent manner had collided with the stationary tractor-



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trolley. While deciding an application under Section 140 of the Act for awarding interim compensation on the principle of no fault liability in a case of the present nature, the MACT was required to *prima facie* make an assessment on the basis of the material on record on the following points:

- (A) Whether death was caused due to collision with the tractor-trolley?
 - (B) Whether the vehicle was owned by the non-applicant?
 - (C) Whether the tractor-trolley was being driven by appellant No.1?
- (6) In the facts and circumstances mentioned above, in my considered opinion, the MACT was wholly justified in awarding interim compensation of Rs.50,000/- against the appellants. This appeal, being devoid of merit, is, therefore, dismissed at admission stage.
- (7) Consequently, I.A.No.1 for grant of stay also stands dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge